

## **REMARKS**

Applicant respectfully requests reconsideration in view of the foregoing amendments and remarks.

### **Status of the Claims:**

Claims 1 is currently amended to include the language of claim 2; claim 2 is canceled without prejudice or disclaimer; and claims 9-10 are new. New claims 9-10 find support throughout the as-filed specification, at, e.g., Figures 2A-2B. No new matter has been added.

Upon entry of this amendment, claims 1 and 3-10 are pending and presented for examination.

### **Rejections under 35 U.S.C. § 102:**

#### **A. Holtkamp (U.S. Patent Plant Patent No. 6,109 covering ‘Improved Atlanta’)**

Claim 1 is rejected under 35 U.S.C. § 102 (b) as allegedly anticipated by Holtkamp (U.S. Plant Patent No. 6,109 covering ‘Improved Atlanta’). Office Action, page 2. Specifically, the PTO alleges “Holtkamp teaches an African Violet plant where ‘out of each leaf axil two flower stems appear.’” *Id.*

Because the cited patent does not teach an African Violet plant having at least one leaf axil that produces at least three flower stems, as presently recited, the patent does not anticipate claim 1. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Furthermore, Holtkamp would not anticipate new claims 9-10, because while ‘Improved Atlanta’ may allegedly disclose a leaf axil having one or two flower stems, the flower stems are not united. In contrast, the instant specification discloses “two flower stems from ‘SB4-2 Muflo’ attached together as found in one leaf axil.” *See*, e.g., paragraph number [0012], as well as Figures 2A-2B.

**B. Holtkamp (U.S. Patent Plant Patent No. 6,575 covering ‘Annie’)**

Claim 1 is rejected under 35 U.S.C. § 102 (b) as allegedly anticipated by Holtkamp (U.S. Plant Patent No. 6,575 covering ‘Annie’). Office Action, page 3. Specifically, the PTO alleges “Holtkamp teaches an African Violet plant with ‘Profuse and continuous flowering, with two flower stems being generated at each leaf axil.’” *Id.*

Because the cited patent does not teach an African Violet plant having at least one leaf axil that produces at least three flower stems, as presently recited, the patent does not anticipate claim 1. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Furthermore, Holtkamp would not anticipate new claims 9-10, because while ‘Annie’ may allegedly disclose a leaf axil having one or two flower stems, the flower stems are not united. In contrast, the instant specification discloses “two flower stems from ‘SB4-2 Muflo’ attached together as found in one leaf axil.” *See*, e.g., paragraph number [0012], as well as Figures 2A-2B.

**Requirement for Information under 37 C.F.R. § 1.105:**

In Response to the PTO’s Requirement for Information, Applicant provides the following responses to each of the PTO’s interrogatories denoted (A)-(M).

Applicant has made a good faith attempt to answer each interrogatory as completely as possible, especially in light of the fact that Applicant had to obtain and review research and development information from Germany that is more than 35-years old.

**A) The PTO requests Applicant provide “the date ‘Improved Atlanta,’ the subject of U.S. Plant Patent No. 6,109, was discovered.” Office Action, page 5, item A.**

‘Improved Atlanta’ was discovered during the research conducted in the period of 1981 and 1982.

**B) The PTO requests Applicant provide “the breeder’s designations for ‘Improved Atlanta’ and ‘Annie,’ the subject matter of U.S. Plant Patent No. 6,575. *Id.* at Item B.**

The breeders designation for ‘Improved Atlanta’ is ‘349 apf girl’ X ‘68 red single.’

The breeders designation for ‘Annie’ is ‘349 apf girl’ X ‘B 15/8.’

**C) The PTO requests Applicant “indicate whether ‘Annie’ or ‘Improved Atlanta’ are related to the seeds sent into space in 1984. Do they share parentage, grandparents, etc.? Are the seeds progeny of either ‘Annie’ or ‘Improved Atlanta?’” *Id.* at Item C.**

To the best of Applicant’s knowledge there is no genetic relationship between the seeds that went into space and ‘Annie’ or ‘Improved Atlanta.’

**D) The PTO requests Applicant “specify whether ‘Annie’ or ‘Improved Atlanta’ display increased numbers of inflorescences per leaf axil with age.” *Id.* at Item D.**

Applicant does not have any research data supporting an assertion that ‘Annie’ or ‘Improved Atlanta’ display increased numbers of inflorescences per leaf axil with age.

**E) The PTO requests Applicant “specify all other known cultivars that display the multiflorescence trait, regardless of origin.” *Id.* at Item E.**

Other than ‘Improved Atlanta’ and ‘Annie,’ Applicant is not aware of any prior art cultivars that display two flower stems per leaf axil. Applicant is not aware of any prior art cultivars that display three or more flower stems per leaf axil.

**F) The PTO requests Applicant “provide more of the genealogy of ‘Improved Atlanta’ and ‘Annie’ and note all cultivars in their ancestry that displayed multiple flower per leaf axil.” *Id.* at Item F.**

**‘Improved Atlanta’ is ‘349 apf girl’ X ‘68 red single’**

The parentage of ‘349 apf girl’ is ‘XIX34 ros girl’ x ‘XVI 148 apf.’ This cross was done in 1974-1975.

The parentage of '68 red single' is '15/8 rot' x 'FEDă'. This cross was done in 1977-1978.

The parentage of 'FEDă' is not known.

The parentage of 15/8 is '4256 vio einf' x '4158 d.ro. einf. Norm.' This cross was done in 1974-1975.

Applicant is not aware of any cultivars in the ancestry of 'Improved Atlanta' that displayed the multiflorescence trait.

**'Annie' is '349 apf girl' X 'B 15/8'**

The parentage of '349 apf girl' is 'XIX34 ros girl' x 'XVI 148 apf.' This cross was done in 1974-1975.

'B 15/8' is the same plant as '15/8.' The designation B may have been dropped in breeders handbook. The parentage of '15/8' is '4256 vio einf' x '4158 d.ro. einf. Norm.' This cross was done in 1974-1975.

Applicant is not aware of any cultivars in the ancestry of 'Annie' that displayed the multiflorescence trait.

**G) The PTO requests Applicant "specify whether or not any of the progeny of 'Improved Atlanta' and 'Annie' have displayed multiple inflorescences per leaf axil."**  
***Id. at Item G.***

Applicant determined that none of the available research notes specify if any of the progeny of 'Improved Atlanta' and 'Annie' produce two or more flower stems per leaf axil.

**H) The PTO requests Applicant "specify whether or not any parent of 'Improved Atlanta' and 'Annie' have displayed multiple inflorescences per leaf axil."**  
***Id. at Item H.***

Applicant determined that there is no record in research notebooks that the progeny of ‘Improved Atlanta’ and ‘Annie’ exhibited multiple inflorescences per leaf axil.

**I) The PTO requests Applicant “specify whether any of the other progeny of any of the space program seed varieties set forth in FIG. 4 irradiated or not, have displayed multiple inflorescences per leaf axil.” *Id.* at Item I.**

Applicant is not aware of any additional progeny that displayed multiple inflorescences per leaf axil.

**J) The PTO requests Applicant “provide the ancestry of the space program seed varieties set forth in FIG. 4 and note all cultivars in their ancestry that have displayed multiple inflorescences per leaf axil.” *Id.* at Item J.**

This information was already provided with the original application. ‘Veluntina X’ and ‘Veluntina AV\*’ designate special breeding cultivars that have been used in Applicant’s breeding program in Germany for many years, but for which Applicant does not have parentage information.

**K) The PTO requests Applicant “note whether or not any of the varieties in FIG. 4 have displayed multiple inflorescences per leaf axil.” *Id.* at Item K.**

Applicant is not aware of any other varieties from Figure 4 that display the multiple inflorescence trait per leaf axil.

**L) The PTO requests clarification regarding statements made by Applicant’s Attorney to the effect that “the inventor has obtained some plants with more than three inflorescences per leaf axil” and that “in some varieties the number of inflorescences per leaf axil increases with age.” *Id.* at Item L. The PTO requests three (3) things in this regard:**

**(1) Applicant is asked to provide more information regarding which cultivars display these traits.**

Applicant confirms the accuracy of Applicant's Attorney's statement that the inventor obtained plants with more than three inflorescences per leaf axil and that in some varieties the number of inflorescences per leaf axil increase with age. To date, none of these plants have been commercialized and therefore only general observations about the multiple inflorescence trait have been made.

**(2) What are their names or breeder's designations?**

Since none of the plants exhibiting more than three inflorescences per leaf axil referred to in (L)(1) above have been commercialized, no cultivar names or breeder's designations have been given to the plants.

**(3) How many leaf axils do they display?**

Applicant confirms that plants with three or more inflorescences per leaf axil have been observed. Frequently, the number of inflorescences per leaf axil increase with plant age. Older plants are more likely to have four or more inflorescences per leaf axil.

**M) The PTO requests Applicant "provide the cultivar names of any seeds launched into space." *Id.* at Item M.**

The African Violet seeds Applicant launched into space did not have any cultivar names associated with their breeding number. None of these seeds were from commercial African Violet cultivars.

## CONCLUSION

Applicant believes that the present application is now in condition for allowance.  
Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date March 25, 2009

By Reg. No. 34,717

FOLEY & LARDNER  
Customer Number: 22428



22428

PATENT TRADEMARK OFFICE

Telephone: (202) 672-5483

Facsimile: (202) 672-5399

  
Richard C. Peet  
Attorney for Applicant  
Registration No. 35,792

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.